

conduct which could be viewed as harassment on these bases, including any verbal or physical conduct relating to an individual's race, color, religion, age, or disability when such conduct:

(a) Has the purpose or effect of creating an intimidating, hostile, or offensive working environment;

(b) Has the purpose or effect of unreasonably interfering with an individual's work performance; or

(c) Otherwise adversely affects an individual's employment opportunities.

**§ 1300.107 Financial interest exemptions.**

In accordance with the provisions of 18 U.S.C. 208(b)(2), TVA has exempted the following financial interests of its employees from the requirements of 18 U.S.C. 208(a) upon the ground that such interests are too remote or too inconsequential to affect the integrity of such employees' services. When any of the following exemptions applies only to a limited range of official actions, rather than all official acts, the range of actions will be specified within the language of the exemption.

(a) An investment in a business enterprise in the form of ownership of bonds, notes, and other evidences of indebtedness which are not convertible into shares of preferred or common stock and have no warrants attached entitling the holder to purchase stock provided that the estimated market value of the interest does not exceed \$5,000;

(b) An investment in the form of shares in the ownership of enterprises, including preferred and common stocks whether voting or nonvoting, or warrants to purchase such shares, or evidences of indebtedness convertible into such shares provided that the estimated market value of the interest does not exceed \$5,000 and does not exceed 1 percent of the estimated market value of all the outstanding shares of the enterprise;

(c) Shares or investments in a well-diversified money market or mutual fund;

(d) Vested interests in a pension fund arising out of former employment and to which no further contributions are being made in the employee's behalf, provided that, if the pension plan is a

defined benefit plan, the assets of the plan are diversified. For the purpose of this provision, payments are not considered to be made "in the employee's behalf" if they are made solely to maintain adequate plan funding rather than to provide specific benefits for the employee; or

(e) The interest an employee has by virtue of his or her personal or family use of electric power or through his or her interests in an organization using electric power generated or distributed by TVA, for purposes of his or her official actions at TVA in the process of developing or approving TVA power rate schedules.

**PART 1301—PROCEDURES**

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## Subpart A

AUTHORITY: 16 U.S.C. 831-831dd, 5 U.S.C. 552.

**§ 1301.1 Records.**

(a) *Records available.* TVA's records will be made available for inspection and copying upon request as provided in this section, except that records are exempt and are not made available if they are:

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and

(ii) Are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of TVA;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from any person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with TVA, including without limitation records relating to control and accounting for special nuclear material and to the physical security plans for the protection of TVA's nuclear facilities;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings,

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished infor-

mation on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institution; or

(9) Geological and geophysical information and data, including maps, concerning wells.

The availability of certain classes of nonexempt records is deferred for such time as TVA may determine is reasonably necessary to avoid interference with the accomplishment of its statutory responsibilities. Such records include bids and information concerning the identity and number of bids received prior to bid opening; all nonexempt records relating to bids between the time of bid opening and award; and all nonexempt records relating to negotiations in progress involving contracts or agreements for the acquisition or disposal of real or personal property by TVA prior to the conclusion of such negotiations. Any reasonably segregable portion of an available record shall be provided to any person requesting such record after deletion of the portions which are exempt under this paragraph.

(b) *Requests.* Requests to inspect and copy TVA records shall be directed to the Tennessee Valley Authority, TVA FOIA Officer, Records and Information Management (RIM), 1101 Market Street, Chattanooga, TN 37402-2801. A request shall:

(1) Be in writing;

(2) State in the text that it is a request for records pursuant to the Freedom of Information Act or the regulations in this section;

(3) Reasonably describe the records requested with sufficient specificity to permit their location and identification; and

(4) Include a statement (if such is the case) that the person making the request will pay all applicable fees under § 1301.2, or a statement of the amount of the maximum applicable fee that such person is willing to pay without further notification from TVA. Requests may be made personally or by mail, but to permit expeditious processing, a mailed request should be identified on the envelope as a Freedom of Information Act request.

(c) *Processing of requests*—(1) *Initial determination.* (i) Within 10 days (excluding Saturdays, Sundays, and legal public holidays) after a request is received by TVA, and subject to paragraph (c)(3) of this section, TVA shall make an initial determination as to whether to comply with the request, and shall immediately give written notice of the determination to the person making the request. Initial determinations shall be made by the TVA FOIA Officer or the TVA FOIA Officer's designee. If the initial determination is not to comply with the request, the notice to the person making the request shall include a statement of the reasons for the denial of the request; a notice of the right of the person making the request to appeal the denial to the TVA FOIA Appeal Official designated in paragraph (c)(2)(iii) of this section, and the time limits therefor; and the name and job title of the person responsible for the initial determination.

(ii) For the purposes of this paragraph, a request is deemed to be received by TVA only when it is physically delivered to the TVA FOIA Officer and meets all the requirements of paragraph (b) of this section. If the request does not contain a sufficient description of the record as required by paragraph (b)(3) of this section, TVA will promptly notify the person making the request of the need for clarification, and the request will not be deemed received until clarification is obtained. If the request does not con-

tain a statement as required by paragraph (b)(4) of this section, or if the amount of anticipated search fees exceeds the higher of the amount stated of \$25, TVA will promptly notify the person making the request of the amount of the anticipated fee. Such notice shall include an offer to confer in order to determine if the request can be reformulated so as to meet the person's needs at lower cost, and the request will not be deemed received until agreement is reached concerning fees.

(2) *Appeal.* (i) If the initial determination is to deny the request, the person making the request may appeal such action to the TVA FOIA Appeal Official. Such an appeal must be taken within 30 days after the person's receipt of the initial determination and is taken by delivering a written notice of appeal to the TVA FOIA Appeal Official designated in paragraph (c)(2)(iii) of this section. Such notice shall include a statement that it is an appeal from a denial of a request under the Freedom of Information Act and shall indicate:

(A) The date on which the denial was issued; and

(B) The date on which the denial was received by the person making the request.

(ii) Within 20 days (excluding Saturdays, Sundays, and legal public holidays) after an appeal is received, and subject to paragraph (c)(3) of this section, TVA shall make a final determination on the appeal. In making such a determination, TVA will consider whether or not to waive the provisions of any exemption contained in paragraph (a) of this section, except that without the written permission of the person involved, TVA will not waive the exemptions contained in paragraphs (a) (4), (6) and (7) of this section. Determinations of appeals under this section shall be made by the TVA FOIA Appeal Official or the FOIA Appeal Official's designee. If the determination on the appeal is to deny the request for records, TVA shall notify the person making the request of such determination, including the reason for the denial; a notice of the person's right to judicial review of the denial; and the name and job title of the TVA

official responsible for the determination of the appeal.

(iii) TVA has designated its Senior Manager, Administrative Services, TVA, 400 Summit Hill Drive, Knoxville, TN 37902-1499 as the TVA FOIA Appeal Official and appeals should be directed accordingly.

(3) *Extensions of time.* (i) The 10-day time limit provided in paragraph (c)(1) of this section may be extended by TVA for unusual circumstances as set forth in this paragraph upon written notice to the person making the request specifying the reason for such extension and the date on which an initial determination is expected to be dispatched to such person. Such extension may not exceed 10 working days, and a decision to make such extension shall be made by the TVA FOIA Officer, or the TVA FOIA Officer's designee.

(ii) The 20-day time limit provided in paragraph (c)(2) of this section may be extended by TVA for unusual circumstances as set forth in this paragraph upon written notice to the person appealing a denial of a request for records. The notice shall specify the reasons for the extension and the date on which a determination of the appeal is expected to be dispatched. The aggregate length of an extension under this paragraph when combined with any extension provided under paragraph (c)(3)(i) of this section shall not exceed 10 working days. A decision to make an extension under this paragraph shall be made by the TVA FOIA Appeal Official or the FOIA Appeal Official's designee.

(iii) For the purposes of this paragraph, unusual circumstances means, to the extent reasonably necessary to the proper processing of the particular request or appeal:

(A) Time necessary to search and collect requested records from segments of the agency separate from the office processing the request;

(B) Time necessary to search for, collect, and appropriately examine the voluminous number of records demanded in a single request; or

(C) Time necessary for consultation with another agency having a substantial interest in the determination of the request, or among two or more

components of the agency which have an interest in the subject matter of the request.

(d) *Manner of making records available.* When TVA determines to comply with a request for records, the records are made available promptly for inspection and copying at the place it considers most feasible. TVA will notify the person requesting the records of the place at which the records will be made available and the amount of the applicable fee pursuant to § 1301.2, and will request the person to set up a mutually convenient time for inspection. Applicable fees are payable prior to actual inspection of the records or prior to receipt of requested copies after inspection, respectively. If TVA deems it more convenient to do so, it may furnish copies of available requested records in lieu of permitting physical inspection thereof. In such case payment of applicable fees is due within 30 days after receipt of the copies.

(e) *Publications.* TVA publishes and sells to the public at nominal cost various materials concerning its activities and other matters within its statutory responsibilities, and also provides for the sale of other materials, such as maps prepared by other agencies, at prices prescribed by such agencies. Such services are not performed under the Freedom of Information Act, and requests for the purchase of such materials are not covered by the provision of paragraphs (a) through (d) of this section. A pricelist and order form for some of the most frequently asked for TVA publications and reports are contained in form TVA 3077, which may be obtained by writing the Manager, Public Affairs, Governmental and Public Affairs, Tennessee Valley Authority, Knoxville, Tennessee 37902-1499. Information about other informational material available for sale or distribution by TVA may be obtained at the same address.

[40 FR 7326, Feb. 19, 1975; 40 FR 10668, Mar. 7, 1975. Redesignated at 44 FR 30682, May 29, 1979, and amended at 53 FR 405, Jan. 7, 1988; 53 FR 31316, Aug. 18, 1988; 57 FR 59908, Dec. 17, 1992; 60 FR 38479, July 27, 1995]

#### § 1301.2 Schedule of fees.

(a) *Basis.* Except as otherwise provided in paragraph (d) of this section,

TVA records available for public inspection under §1301.1 are made available upon payment of uniform fees which will approximately cover the direct costs to TVA of searching for, duplicating, and in the case of commercial requesters, reviewing the records.

(b) *Definitions*—(1) *Search*. The term “search” includes all time spent looking for material that is responsive to a request, including page-by-page and/or line-by-line identification of material within records, and computer searches using existing programming.

(2) *Duplication*. The term “duplication” refers to the process of making a copy of a record necessary to respond to a request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others.

(3) *Review*. The term “review” refers to the initial process of examining records located in response to a commercial use request to determine whether any portion of any record located is permitted to be withheld. It also includes processing any records for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release.

(4) *Commercial use request*. The term “commercial use request” refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether the requester properly belongs in this category, TVA will determine the use to which the requester will put the records sought. Where TVA has reasonable cause to doubt the use to which the requester will put the records sought, or where the use is not clear from the request itself, TVA may seek additional clarification.

(5) *Educational institution*. The term “educational institution” refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a

program or programs of scholarly research.

(6) *Noncommercial scientific institution*. The term “noncommercial scientific institution” refers to an institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(7) *Representative of the news media*. The term “representative of the news media” refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. News is any information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public, and publishers of periodicals who make their products available for purchase or subscription by the public. A free-lance journalist may be regarded as working for a news entity if that journalist can demonstrate a solid basis for expecting publication through that entity, even though not actually employed by it.

(c) *Fees*. The following fees are applicable:

(1) *Search time charges for other than computer searches*. For time spent by clerical employees in searching files, the charge is \$10.10 per hour. For time spent by supervisory and professional employees, the charge is \$32.20 per hour.

(2) *Duplication charges*. For photostatic reproduction of requested material which consists of sheets no larger than 8½ by 14 inches, the charge is 10 cents per page. For reproduction of other materials, the charge is the direct cost of photostat or other means necessarily used for duplication.

(3) *Review charges*. For initial review of documents in response to a commercial use request, the time spent reviewing them to determine whether they are exempt from mandatory disclosure is charged at the same rates as search time.

(4) *Charges for computer searches*. For computer searches, the charge is the direct cost of providing the service, including the cost of operating the

central processing unit for that portion of operating time that is directly attributable to searching for responsive records, and operator/programmer salary apportionable to the search.

(5) *Other charges.* Where a response to a request requires services (including personnel) or materials other than the ones described in paragraphs (c)(1), (2), (3), and (4) of this section, the charge is the full cost of any such services and materials which TVA agrees to provide, but only if the requester has been notified of such cost before it is incurred, or if the request contains a statement accepting responsibility for the cost to be incurred. Such services or materials (provided at TVA's discretion) include:

(i) Certifying that records are true copies;

(ii) Sending records by special methods such as express mail, etc.

(d) *Waiver of fees and services provided without charge.* (1) TVA waives or reduces fees otherwise chargeable under this section if TVA determines that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(2) Except for documents provided in response to a commercial use request, the first 100 pages and the first 2 hours of search time will be provided without charge. Educational and noncommercial scientific institution requesters who seek records for scholarly or scientific research and representatives of the news media are not charged search time.

(3) No fee is charged to any requester if the cost of collecting the fee would be equal to or greater than the fee itself.

(e) *Assessment and collection of fees.* (1) Interest may be charged to those requesters who fail to pay fees charged. Interest may begin to be assessed on the amount billed on the 31st day following the day on which the billing was sent but any interest assessed will accrue from the date of the billing. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(2) If TVA reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, TVA may aggregate any such requests and charge accordingly.

(3) If TVA determines that the allowable charges a requester may be required to pay are likely to exceed \$250, TVA may require a requester to make an advance payment of an amount up to the full estimated charges if the requester has no history of prompt payment. If the requester has such a history, TVA may notify the requester of the estimated charges and if a satisfactory assurance of full payment is obtained, will not require an advance payment under this provision. The administrative time limits prescribed in §1301.1(c) of this part will begin to run only after TVA has received any payment required to be made in advance under this provision.

(4) Where a requester has previously failed to pay a fee charged in a timely manner (within 30 days of the date of billing), TVA may require the requester to pay the full amount owed plus any applicable interest as provided in paragraph (e)(1) of this section and to make an advance payment of the full estimated charges before the agency begins to process a new request or a pending request from that requester. The administrative time limits prescribed in §1301.1(c) of this part will begin to run only after TVA has received any payment required to be made in advance under this provision.

(5) TVA may assess charges for time spent searching, even if TVA fails to locate the records or if records located are determined to be exempt from disclosure.

[52 FR 17939, May 13, 1987, as amended at 58 FR 53656, Oct. 18, 1993]

### § 1301.3 Waiver or reduction of fees.

(a) Records responsive to a request under 5 U.S.C. 552 shall be furnished without charge or at a charge reduced below that established under §1301.2 where TVA determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to TVA, that disclosure of the requested information is

in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees, which shall be made at the same time as the requests for records, shall be considered on a case-by-case basis.

(b) In order to determine whether the first fee waiver requirement is met—i.e., that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government—TVA shall consider the following four factors in sequence:

(1) The subject of the request: Whether the subject of the requested records concerns “the operations or activities of the government.” The subject matter of the requested records, in the context of the request, must specifically concern identifiable operations or activities of the federal government—with a connection that is direct and clear, not remote or attenuated. Furthermore, the records must be sought for their informative value with respect to those government operations or activities; a request for access to records for their intrinsic informational content alone will not satisfy this threshold consideration.

(2) The informational value of the information to be disclosed: Whether the disclosure is “likely to contribute” to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative on specific government operations or activities in order to hold potential for contributing to increased public understanding of those operations and activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record.

(3) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to “public

understanding.” The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. A requester’s identity and qualification—e.g., expertise in the subject area and ability and intention to effectively convey information to the general public—should be considered. It reasonably may be presumed that a representative of the news media (as defined in paragraph 1301.2(b)(7)) who has access to the means of public dissemination readily will be able to satisfy this consideration. Requests from libraries or other record repositories (or requesters who intend merely to disseminate information to such institutions) shall be analyzed, like those of other requesters, to identify a particular person who represents that he actually will use the requested information in scholarly or other analytic work and then disseminate it to the general public.

(4) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities. The public’s understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. TVA shall not make separate value judgments as to whether information, even though it in fact would contribute significantly to public understanding of the operations or activities of the government, is “important” enough to be made public.

(c) In order to determine whether the second fee waiver requirement is met—i.e., that disclosure of the requested information is not primarily in the commercial interest of the requester—TVA shall consider the following two factors in sequence:

(1) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. TVA shall consider all commercial interests of the requester (with reference to the definition of “commercial use” in paragraph 1301.2(b)(4)), or

any person on whose behalf the requester may be acting, but shall consider only those interests which would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration shall be given to the role that such FOIA-disclosed information plays with respect to those commercial interests, as well as to the extent to which FOIA disclosures serve those interests overall. Requesters shall be given a reasonable opportunity in the administrative process to provide information bearing upon this consideration.

(2) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." A fee waiver or reduction is warranted only where, once the "public interest" standard set out in paragraph (b) of this section is satisfied, that public interest can fairly be regarded as greater in magnitude than that of the requester's commercial interest in disclosure. TVA shall ordinarily presume that, where a news media requester has satisfied the "public interest" standard, that will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who compile and market government information for direct economic return shall not be presumed to primarily serve the "public interest."

(d) Where only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(e) Requests for the waiver or reduction of fees shall address each of the factors listed in paragraphs (b) and (c) of this section, as they apply to each record request.

(f) A denial of a request for reduced fees or of a request for waiver of fees, in whole or in part, will be made in writing, will state the reasons for the denial, and will notify the requester of the right to appeal the denial. The appeal process for denial of a fee waiver or reduction of fees shall be identical

to the appeal process for denial of a requested record and shall be subject to the procedures detailed in § 1301.1(c)(2).

[57 FR 23532, June 4, 1992]

### Subpart B—Privacy Act

AUTHORITY: 16 U.S.C. 831-831dd, 5 U.S.C. 552a.

SOURCE: 40 FR 45313, Oct. 1, 1975, unless otherwise noted. Redesignated at 44 FR 30682, May 29, 1979.

#### § 1301.11 Purpose and scope.

(a) The regulations in §§ 1301.11 to 1301.24 implement section 3 of the Privacy Act of 1974, 5 U.S.C. 552a, with respect to systems of records maintained by TVA. They provide procedures by which an individual may exercise the rights granted by the Act to determine whether a TVA system contains a record pertaining to him; to gain access to such records; to have a copy made of all or any portion thereof; and to request administrative correction or amendment of such records. They prescribe fees to be charged for copying records; establish identification requirements; list penalties provided by statute for certain violations of the Act; and establish exemptions from certain requirements of the Act for certain TVA systems or components thereof.

(b) Nothing in §§ 1301.11 to 1301.24 entitles an individual to any access to any information or record compiled in reasonable anticipation of a civil action or proceeding.

(c) Certain records of which TVA may have physical possession are the official records of another government agency which exercises dominion and control over the records, their content, and access thereto. In such cases, TVA's maintenance of the records is subject to the direction of the other government agency. Except for a request for a determination of the existence of the record, when TVA receives requests related to these records, TVA will immediately refer the request to the controlling agency for all decisions regarding the request, and will notify the individual making the request of the referral.



**§ 1301.12 Definitions.**

For purposes of §§ 1301.11 to 1301.24:

(a) The *Act* means section 3 of the Privacy Act of 1974, 5 U.S.C. 552a;

(b) The terms *individual*, *maintain*, *record*, *system of records*, *statistical record*, and *routine use* have the meaning provided for by the Act;

(c) The term *TVA system* means a system of records maintained by TVA;

(d) The term *TVA system notice* means a notice of a TVA system published in the FEDERAL REGISTER pursuant to the Act. TVA has published TVA system notices about the following TVA systems:

Apprentice Training Record System—TVA.  
 Personnel Files—TVA.  
 Upgrade Craft Training Program—TVA.  
 Demonstration Farm Records—TVA.  
 Discrimination Complaint Files—TVA.  
 Employee Accident Information System—TVA.  
 Employee Accounts Receivable—TVA.  
 Employee Alleged Misconduct Investigatory Files—TVA.  
 Medical Record System—TVA.  
 Employee Statement of Employment and Financial Interests—TVA.  
 Payroll Records—TVA.  
 Travel History Records—TVA.  
 Employment Applicant Files—TVA.  
 Grievance Records—TVA.  
 LAND BETWEEN THE LAKES® Hunter Records—TVA.  
 LAND BETWEEN THE LAKES® Register of Law Violations—TVA.  
 Employee Supplementary Vacancy Announcement Records—TVA.  
 Consultant and Personal Service Contractor Records—TVA.  
 Nuclear Quality Assurance Personnel Records—TVA.  
 Questionnaire—Farms in Vicinity of Proposed or Licensed Nuclear Power Plant—TVA.  
 Radiation Dosimetry Personnel Monitoring Records—TVA.  
 Retirement System Records—TVA.  
 Test Demonstration Farm Records—TVA.  
 Woodland Resource Analysis Program Input Data—TVA.  
 Electricity Use, Rate, and Service Study Records—TVA.  
 LAND BETWEEN LAKES® Mailing Lists—TVA.  
 OIG Investigative Records—TVA.  
 Call Detail Records—TVA.  
 Office of Nuclear Power Call Detail Records—TVA.  
 Project/Tract Files—TVA.  
 Building Access Security Records—TVA.  
 Section 26a Permit Applications—TVA.

(e) The term *appellant* means an individual who has filed an appeal pursuant to § 1301.19(a) from an initial determination refusing to amend a record on request of the individual;

(f) The term *reviewing official* means TVA's Vice President, Employee Worklife, or another TVA official designated by the Vice President in writing to decide an appeal pursuant to § 1301.19;

(g) The term *day*, when used in computing a time period, excludes Saturdays, Sundays, and legal public holidays.

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and amended at 53 FR 30252, Aug. 11, 1988; 56 FR 9288, Mar. 6, 1991; 57 FR 33634, July 30, 1992; 57 FR 59803, Dec. 16, 1992]

**§ 1301.13 Procedures for requests pertaining to individual records in a record system.**

(a) An individual may, in accordance with this section (1) request a TVA determination whether a record retrieved by the individual's name or other personal identifier is maintained in a TVA system, and (2) request access to such a record. A request for determination may be combined with a request for access.

(b) Requests under this section shall:

(1) Be in writing and signed by the individual seeking the determination or access;

(2) Include the individual's mailing address;

(3) Name the TVA system as listed in the TVA system notice;

(4) Include any additional identifying information specified in the paragraph headed "Notification procedure" in the applicable TVA system notice;

(5) Specify whether the request is for determination only or for both determination and access; and

(6) Include such proof of identity as may be required by § 1301.14 and the applicable system notice.

Requests may be presented in person or by mail. In-person requests shall be presented during normal TVA business hours, as set out in § 1301.14(g).

(c) Requests for determination only shall be presented to the official designated in the paragraph headed "Notification procedure" in the TVA system

notice for the TVA system concerned. Requests for both determination and access shall be presented to the official designated in the paragraph headed "Access procedure" in the TVA system notice for the TVA system concerned. Certain TVA system notices designate officials at field locations of TVA systems. With respect to such TVA systems, an individual who believes his record is located at the field location may present a request to the designated official at the field location. If the record is not available at that field location, the request will be forwarded to the appropriate TVA office.

(d) If a request is for determination only, the determination will normally be made within 10 days after receipt of the request. If the determination cannot be made within 10 days after receipt of a request, the designated official will acknowledge the request in writing and state when the determination will be made. Upon making a determination, the designated official will notify the individual making the request whether the record exists. The notice will include any additional information necessary to enable the individual to request access to the record.

(e) A request which includes a request for access will be acknowledged within 10 days after receipt. If access can be granted as requested, the acknowledgment will provide a time and place for disclosure of the requested record. Disclosure will normally be made within 30 days of the date of the acknowledgement, but the designated official may extend the 30-day period for reasons found by him to be good cause. In case of an extension, TVA will notify the individual, in writing, that disclosure will be delayed, the reasons for delay, and the anticipated date on which the individual may expect the record to be disclosed. TVA will attempt to accommodate reasonable requests for disclosure at specified times and dates, as set forth in a request for access, so far as compatible with the conduct of TVA business.

**§ 1301.14 Times, places, and requirements for identification of individuals making requests.**

(a) TVA will require proof of identity, in accordance with this section,

before it will disclose a record under § 1301.15 of this part to an individual requesting access to the record, and before it will disclose the existence of a record to a requester under § 1301.13 of this part, if TVA determines that disclosure of the existence of such record would constitute an unwarranted invasion of personal privacy.

(b) Identification normally required would be an identification card such as a valid state driver's license or TVA or other employee identification card. A comparison of the signature of the requester with either the signature on the card or a signature in the record may be used to confirm identity.

(c) Because of the sensitivity of the subject matter in a TVA system, a TVA system notice may prescribe special identification requirements for the disclosure of the existence of or access to records in that TVA system. In such case, the special identification requirements prescribed in the TVA system notice shall apply in lieu of those prescribed by paragraph (b) of this section.

(d) If TVA deems it warranted by the nature of identification presented, the subject matter of the material to be disclosed, or other reasons found by TVA to be sufficient, TVA may require the individual requesting access to sign a statement asserting identity and stating that the individual understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to \$5,000.

(e) Where TVA is requested to provide access to records by mailing copies of records to the requester, the request shall contain or be accompanied by adequate identifying information to make it likely the requester is the person he purports to be and a notarized statement asserting identity and stating that the individual understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to \$5,000.

(f) Where sensitivity of record information may warrant (i.e., unauthorized access could cause harm or embarrassment to the individual) or disclosure by mail to third persons is requested,

TVA may require in-person confirmation of identity. If in-person confirmation of identity is required, the individual may arrange with the designated TVA official to provide such identification at any of these TVA locations convenient to the individual: Knoxville, Nashville, and Chattanooga, Tennessee; Muscle Shoals, Alabama; Washington, DC, or another location agreed upon by the individual and the designated TVA official. Upon request the TVA official will provide an address and an appropriate time for such identification to be presented.

(g) In general, TVA offices located in the eastern time zone are open 8 a.m. to 4:45 p.m., and those in the central time zone 7:30 a.m. to 4:15 p.m. Construction project offices and Land Between The Lakes are generally open 7 a.m. to 3:30 p.m. Offices are closed on Saturdays, Sundays, and the following holidays: New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and amended at 53 FR 30253, Aug. 11, 1988]

**§ 1301.15 Disclosure of requested information to individuals.**

(a) All disclosure and examination of records shall normally be made in the presence of a TVA representative. If an individual wishes to be accompanied by a third person of the individual's choosing when the record is disclosed, TVA may require the individual to furnish TVA, in advance of disclosure of the record, a statement signed by the individual authorizing discussion and disclosure of the record in the presence of the accompanying person. If desired by the individual, TVA shall provide copies of any documents reviewed in the record which are requested at the time of review. Fees shall be charged for such copies in accordance with the fee schedule in § 1301.21, and shall be payable prior to delivery of the copies to the individual.

(b) Where permitted by § 1301.14, copies of an individual's record will be made available by mail. A charge for copies will be made in accordance with

§ 1301.21 of this part. All fees due shall be paid prior to mailing of the materials. However, if TVA is unable to allow in-person review of the record, the first copy will be made available without charge.

**§ 1301.16 Special procedures—medical records.**

If, in the judgment of TVA, the transmission of medical records, including psychological records, directly to a requesting individual could have an adverse effect upon such individual, TVA may refuse to disclose such information directly to the individual. TVA will, however, disclose this information to a licensed physician designated by the individual in writing.

**§ 1301.17 Requests for correction or amendment of record.**

(a) An individual may request amendment of records pertaining to him in a TVA system to the extent permitted by the Act in accordance with this section. A request for amendment shall:

- (1) Be in writing and signed by the individual seeking the amendment;
- (2) Name the TVA system in which the record is maintained;
- (3) Describe the item or items of information to be amended;
- (4) Describe the nature of the amendment requested; and
- (5) Give the reasons for the requested change.

(b) Requests shall be made to the official designated in the paragraph headed "Contesting record procedures" in the TVA system notice for the TVA system concerned. Before considering a request, TVA may require proof of identity of the requester similar to that required under § 1301.14 to gain access to the record.

(c) The individual requesting amendment has the responsibility of providing TVA with evidence of why his record should be amended, and must provide adequate evidence to TVA to justify his request.

(d) The provisions of §§ 1301.11 to 1301.24 of this part do not permit the alteration of evidence presented or to be presented in the course of judicial or administrative proceedings; neither do they permit collateral attack on a prior judicial or administrative action,

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or provide a collateral remedy for a matter otherwise judicially or administratively cognizable.

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and amended at 53 FR 30253, Aug. 11, 1988]

### **§ 1301.18 TVA review of request for correction or amendment of record.**

(a) TVA will acknowledge a request for amendment within 10 days of receipt. The acknowledgement will be in writing, will request any additional information TVA requires to determine whether to make the requested correction or amendment, and will indicate the date by which TVA expects to make its initial determination.

(b) TVA will, except in unusual circumstances, complete its consideration of requests to amend records within 30 days. If more time is deemed necessary, TVA will notify the individual of the delay and of the expected date of completion of the review.

(c) If TVA determines that a record should be corrected or amended, in whole or in part, in accordance with a request, it will advise the requesting individual in writing of its determination, and correct or amend the record accordingly. If an accounting of disclosures has been made, TVA will, to the extent of the accounting, inform prior recipients of the record of the fact that the correction was made and the substance of the correction.

(d) If TVA, after initial consideration of a request, determines that a record should not be corrected or amended, in whole or in part, in accordance with a request, it will notify the individual in writing of its refusal to amend the record and the reasons therefor. The notification will inform the individual that the refusal may be appealed administratively and will advise the individual of the procedures for such appeals.

### **§ 1301.19 Appeals on initial adverse agency determination on correction or amendment.**

(a) An individual may appeal an initial determination refusing to amend that individual's record in accordance with this section. An appeal must be taken within 20 days of receipt of notice of TVA's initial refusal to amend

the record and is taken by delivering a written notice of appeal to the Vice President, Employee Worklife, Tennessee Valley Authority, Knoxville, Tennessee 37902. Such notice shall be signed by the appellant and shall state:

(1) That it is an appeal from a denial of a request to amend the individual's records under these regulations and under the Privacy Act of 1974;

(2) The reasons why the appellant believes the denial to have been erroneous;

(3) The date on which the denial was issued; and

(4) The date on which the denial was received by the appellant.

(b) Appeals shall be determined by a reviewing official. Such determination may be based on information provided for the initial determination; any additional information which TVA or the appellant may desire to provide; and any other material the reviewing official deems relevant to the determination. The reviewing official, in his sole discretion, may request TVA or the appellant to provide additional information deemed relevant to the appeal. The appellant will be given an opportunity to respond to any information provided by TVA or independently procured by the reviewing official. If in the sole discretion of the reviewing official a hearing is deemed necessary for resolution of the appeal, the reviewing official may conduct a hearing upon notice to TVA and the appellant, at which both TVA and the appellant shall be afforded an opportunity to be heard on the appeal. The rules governing any hearing will be set forth in the notice of hearing.

(c) The reviewing official shall make final determination on the appeal within 30 days after it is received unless such period is extended for good cause. If the reviewing official finds good cause for an extension, TVA will inform the appellant in writing of the reason for the delay and of the approximate date on which the reviewing official expects to complete his determination of the appeal.

(d) If the reviewing official determines that a record should be amended in whole or in part in accordance with

an appellant's request, TVA will inform the appellant in writing of its determination and correct or amend the record. If an accounting of disclosures has been made, TVA will, to the extent of the accounting, inform prior recipients of the record of the fact that the correction was made and of the substance of the correction.

(e) If the reviewing official determines not to amend a record, in whole or in part, in accordance with a request, TVA will advise the individual:

(1) Of its refusal to amend and the reasons therefor;

(2) Of the appellant's right to file a concise statement of reasons for disagreement with the refusal as set out in paragraph (f) of this section;

(3) Of the procedures for filing a statement of disagreement;

(4) That any statement of disagreement will be made available to anyone to whom the record is subsequently disclosed together with any statement by TVA summarizing its reasons for refusing to amend the record;

(5) That prior recipients of the disputed record will be provided a copy of any statement of dispute to the extent that an accounting of disclosures was maintained; and

(6) Of his or her right to seek judicial review of the agency's refusal to amend a record.

(f) If the reviewing official's final determination of an appeal is a refusal to correct or amend a record, in whole or in part, in accordance with the request, the appellant may file with TVA a concise statement setting forth the reasons for his or her disagreement with the refusal of TVA to amend the records. Such statements normally should not exceed 100 words. A statement of disagreement should be submitted within 30 days of receipt of notice of the reviewing official's decision on the appeal, and should be sent to system manager. In any disclosure containing information about which the individual has filed a statement of disagreement which occurs after the filing of the statement, TVA will clearly note any portion of the record which is disputed and provide copies of the statement with the disclosure. Copies of the statement will also be furnished to persons or other agencies to whom the

record has been disclosed to the extent that an accounting of disclosures was made. TVA may attach to the statement of disagreement a brief summary of TVA's reasons for refusing to amend the record. Such summaries will be disclosed to the individual, but are not subject to amendment.

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and amended at 53 FR 30253, Aug. 11, 1988; 57 FR 33634, July 30, 1992]

**§ 1301.20 Disclosure of record to persons other than individual to whom it pertains.**

For purposes of §§1301.11 to 1301.24, the parent of any minor or the legal guardian of any individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction may act on behalf of the individual. TVA may require proof of the relationship prior to allowing such action. The parent or legal guardian may not act where the individual concerned objects to the action of the parent or legal guardian, unless a court otherwise orders.

**§ 1301.21 Fees.**

(a) Fees to be charged, if any, to any individual for making copies of his or her record exclude the cost of any search and review of the record. The following fees are applicable:

(1) For reproduction of material consisting of sheets no larger than 8½ by 14 inches, ten cents per page; and

(2) For reproduction of other materials, the direct cost of photostats or other means necessarily used for duplication.

(b) [Reserved]

**§ 1301.22 Penalties.**

Section 552a(i), Title 5, United States Code provides that:

(1) *Criminal Penalties.* Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive

it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

#### § 1301.23 General exemptions.

(a) Individuals may not have access to records maintained by TVA but which were provided by another agency which has determined by regulation that such information is subject to general exemption under 5 U.S.C. 552a(j). If such exempt records are within a request for access, TVA will advise the individual of their existence and of the name and address of the source agency. For any further information concerning the record and the exemption, the individual must contact that source agency.

(b) The TVA system "Land Between The Lakes Register of Law Violations—TVA" is exempted from subsections (c)(3), (4); (d); (e)(1), (2), (3), (4)(G), (4)(H), (4)(I), (5); (f); (g); and (h) of 5 U.S.C. 552a and corresponding sections of these rules pursuant to section (j)(2) of 5 U.S.C. 552a (section 3 of the Privacy Act). Application of these provisions of the Privacy Act to the criminal law enforcement records in this system might interfere with effective law enforcement at the Land Between The Lakes.

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and amended at 53 FR 30253, Aug. 11, 1988]

#### § 1301.24 Specific exemptions.

(a) The TVA system "Employee Alleged Misconduct Investigatory Files—TVA" is exempted from subsections (c)(3); (d); (e)(1), (4)(G), (4)(H), (4)(I); and (f) of 5 U.S.C. 552a and corresponding sections of these rules pursuant to section (k)(2) of 5 U.S.C. 552a (section 3 of the Privacy Act). This TVA system is exempted because applications of these provisions to this system might impair investigations of employee misconduct.

(b)(1) The TVA systems "Apprentice Training Record System-TVA," "Consultant and Personal Service Contractor Records-TVA," "Upgrade Craft Training Program-TVA," "Employment Applicant Files-TVA," "Personnel Files-TVA," and "Nuclear Quality Assurance Personnel Records-TVA" are exempted from subsections (d); (e)(4)(H); (f)(2), (3), and (4) of 5 U.S.C. 552a and corresponding sections of these rules to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. These TVA systems are exempted pursuant to section (k)(5) of 5 U.S.C. 552a (section 3 of the Privacy Act).

(2) Each of these TVA systems contain reference letters and information concerning employees and other individuals who perform services for TVA. TVA has received this information in the past under both express and implied promises of confidentiality and consistent with the Privacy Act these promises will be honored. Pledges of confidentiality will be necessary in the future to ensure that unqualified or unsuitable individuals are not selected for TVA positions. Without the ability to make these promises, a potential source of information may be unwilling to provide needed information, or may not be sufficiently frank to be of value in personnel screening.

(c)(1) The TVA systems "Apprentice Training Record System-TVA," "Consultant and Personal Service Contractor Records-TVA," "Upgrade Craft Training Program-TVA," "Employment Applicant Files-TVA," and "Personnel Files-TVA," are exempted from subsections (d); (e)(4)(H); (f)(2), (3), and (4) of 5 U.S.C. 552a and corresponding sections of these rules to the extent that disclosure of testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service would compromise the objectivity or fairness of the testing or examination process. These systems are exempted pursuant to section (k)(6) of 5

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U.S.C. 552a (section 3 of the Privacy Act).

(2) This material is exempted because its disclosure would reveal information about the testing process which would potentially give an individual an unfair competitive advantage in selection based on test performance.

(d) The TVA system OIG Investigative Records is exempt from subsections (c)(3), (d), (e)(1), (e)(4), (G), (H), and (I) and (f) of 5 U.S.C. 552a (section 3 of the Privacy Act) and corresponding sections of these rules pursuant to 5 U.S.C. 552a(k)(2). The TVA system OIG Investigative Records is exempt from subsections (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), and (g) pursuant to 5 U.S.C. 552a(j)(2). This system is exempt because application of these provisions might alert investigation subjects to the existence or scope of investigations, lead to suppression, alteration, fabrication, or destruction of evidence, disclose investigative techniques or procedures, reduce the cooperativeness or safety of witnesses, or otherwise impair investigations.

(e) The TVA system TVA Police Records is exempt from subsections (c)(3), (d), (e)(1), (e)(4), (G), (H), and (I) and (f) of 5 U.S.C. 552a (section 3 of the Privacy Act) and corresponding sections of these rules pursuant to 5 U.S.C. 552a(k)(2). The TVA system Police Records is exempt from subsections (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), and (g) pursuant to 5 U.S.C. 552a(j)(2). This system is exempt because application of these provisions might alert investigation subjects to the existence or scope of investigations, lead to suppression, alteration, fabrication, or destruction of evidence, disclose investigative techniques or procedures, reduce the cooperativeness or safety of witnesses, or otherwise impair investigations.

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and amended at 53 FR 30253, Aug. 11, 1988; 56 FR 9288, Mar. 6, 1991; 61 FR 2111, Jan. 25, 1996; 62 FR 4644, Jan. 31, 1997]

## 18 CFR Ch. XIII (4-1-98 Edition)

### Subpart C—Government in the Sunshine Act

AUTHORITY: 16 U.S.C. 831-831dd, 5 U.S.C. 552b.

SOURCE: 42 FR 14086, Mar. 15, 1977, unless otherwise noted. Redesignated at 44 FR 30682, May 29, 1979.

#### § 1301.41 Purpose and scope.

(a) The provisions of this subpart are intended to implement the requirements of section 3(a) of the Government in the Sunshine Act, 5 U.S.C. 552b, consistent with the purposes and provisions of the Tennessee Valley Authority Act of 1933, 16 U.S.C. 831-831dd.

(b) Nothing in this subpart expands or limits the present rights of any person under the Freedom of Information Act (5 U.S.C. 552) and the provisions of Subpart A of this part, except that the exemptions set forth in § 1301.46 shall govern in the case of any request made pursuant to the Freedom of Information Act and Subpart A to copy or inspect the transcripts, recordings, or minutes described in § 1301.47.

(c) Nothing in this subpart authorizes TVA to withhold from any individual any record, including transcripts, recordings, or minutes required by this subpart, which is otherwise accessible to such individual under the Privacy Act (5 U.S.C. 552a) and the provisions of Subpart B.

(d) The requirements of Chapter 33 of Title 44 of the United States Code shall not apply to the transcripts, recordings, and minutes described in § 1301.47.

#### § 1301.42 Definitions.

For the purposes of this subpart:

(a) The term *Board* means the Board of Directors of the Tennessee Valley Authority;

(b) The term *meeting* means the deliberations of two or more members of the TVA Board where such deliberations determine or result in the joint conduct or disposition of official TVA business, but the term does not include deliberations required or permitted by § 1301.44 or § 1301.45;

(c) The term *member* means an individual who is a member of the TVA Board; and

(d) The term *TVA* means the Tennessee Valley Authority.

**§ 1301.43 Open meetings.**

Members shall not jointly conduct or dispose of TVA business other than in accordance with this subpart. Except as provided in § 1301.46, every portion of every meeting of the agency shall be open to public observation, and TVA shall provide suitable facilities therefor, but participation in the deliberations at such meetings shall be limited to members and certain TVA personnel. The public may make reasonable use of electronic or other devices or cameras to record deliberations or actions at meetings so long as such use is not disruptive of the meetings.

[42 FR 21470, Apr. 27, 1977. Redesignated at 44 FR 30682, May 29, 1979]

**§ 1301.44 Notice of meetings.**

(a) TVA shall make a public announcement of the time, place, and subject matter of each meeting, whether it is to be open or closed to the public, and the name and telephone number of a TVA official who can respond to requests for information about the meeting.

(b) Such public announcement shall be made at least one week before the meeting unless two or more members determine by a recorded vote that TVA business requires that such meeting be called at an earlier date. If an earlier date is so established, TVA shall make such public announcement at the earliest practicable time.

(c) Following a public announcement required by paragraph (a) of this section, the time or place of the meeting may be changed only if TVA publicly announces the change at the earliest practicable time. The subject matter of a meeting or the determination to open or close a meeting or portion of a meeting to the public may be changed following the public announcement required by paragraph (a) of this section only if two or more members determine by a recorded vote that TVA business so requires and that no earlier announcement of the change was possible and if TVA publicly announces such change and the vote of each member upon such change at the earliest, practicable time.

(d) Immediately following each public announcement required by this section, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the TVA official designated to respond to requests for information about the meeting shall be submitted for publication in the FEDERAL REGISTER.

**§ 1301.45 Procedure for closing meetings.**

(a) Action under § 1301.46 to close a meeting shall be taken only when two or more members vote to take such action. A separate vote shall be taken with respect to each meeting a portion or portions of which are proposed to be closed to the public pursuant to § 1301.46 or with respect to any information which is proposed to be withheld under § 1301.46. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series. The vote of each member participating in such vote shall be recorded and no proxies shall be allowed.

(b) Notwithstanding that the members may have already voted not to close a meeting, whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraphs (e), (f), or (g) of § 1301.46, the Board, upon request of any one of its members made prior to the commencement of such portion, shall vote by recorded vote whether to close such portion of the meeting.

(c) Within one day of any vote taken pursuant to this section, TVA shall make publicly available in accordance with § 1301.48 a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, TVA shall, within one day of the vote taken pursuant to this section, make



publicly available in accordance with § 1301.48 a full written explanation of this action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(d) Prior to every meeting closed pursuant to § 1301.46, there shall be a certification by the General Counsel of TVA stating whether, in his or her opinion, the meeting may be closed to the public and each relevant exemptive provision. A copy of such certification shall be retained by TVA and shall be made publicly available in accordance with § 1301.48.

**§ 1301.46 Criteria for closing meetings.**

Except in a case where the Board finds that the public interest requires otherwise, the second sentence of § 1301.43 shall not apply to any portion of a meeting and such portion may be closed to the public, and the requirements of §§ 1301.44 and 1301.45(a), (b), and (c) shall not apply to any information pertaining to such meeting otherwise required by this subpart to be disclosed to the public, where the Board properly determines that such portion or portions of its meeting or the disclosure of such information is likely to:

(a) Disclose matters that are (1) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (2) in fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practices of an agency;

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial or an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information the premature disclosure of which would:

(1) In the case of any agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution; or

(2) In the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except that this provision shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(j) Specifically concern an agency's issuance of a subpoena, or its participation in a civil action or proceeding, an

action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by an agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

**§ 1301.47 Transcripts of closed meetings.**

(a) For every meeting closed pursuant to § 1301.46, the presiding officer of the meeting shall prepare a statement setting forth the time and place of the meeting, and the persons present, and such statement shall be retained by TVA.

(b) TVA shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (h), (i)(1), or (j) of § 1301.46, TVA shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(c) TVA shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any TVA proceeding with respect to which the meeting or portion was held, whichever occurs later.

**§ 1301.48 Public availability of transcripts and other documents.**

(a) Public announcements of meetings pursuant to § 1301.44, written copies of votes to change the subject matter of meetings made pursuant to § 1301.44(c), written copies of votes to

close meetings and explanations of such closings made pursuant to § 1301.45(c) and certifications of the General Counsel made pursuant to § 1301.45(d) shall be available for public inspection during regular business hours in the TVA Corporate Library, room WT 2F, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1499.

(b) TVA shall make promptly available to the public at the location described in paragraph (a) of this section the transcript, electronic recording, or minutes (as required by § 1301.47(b)) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as TVA determines to contain information which may be withheld under § 1301.46. Each request for such material shall be made to the Manager, Media Relations, Tennessee Valley Authority, Knoxville, Tennessee 37902-1499; state that it is a request for records pursuant to the Government in the Sunshine Act and this subpart; and reasonably describe the discussion or item of testimony, and the date of the meeting, with sufficient specificity to permit TVA to identify the item requested.

(c) In the event the person making a request under paragraph (b) of this section has reason to believe that all transcripts, electronic recordings, or minutes or portions thereof requested by that person and required to be made available under paragraph (b) of this section were not made available, the person shall make a written request to the Manager, Media Relations for such additional transcripts, electronic recordings, or minutes or portions thereof as that person believes should have been made available under paragraph (b) of this section and shall set forth in the request the reasons why such additional material is required to be made available with sufficient particularity for the Manager, Media Relations to determine the validity of such request. Promptly after a request pursuant to this paragraph is received, the Manager, Media Relations or his/her designee shall make a determination as to whether to comply with the request, and shall immediately give written notice of the determination to the person

making the request. If the determination is to deny the request, the notice to the person making the request shall include a statement of the reasons for the denial, a notice of the right of the person making the request to appeal the denial to TVA's Senior Vice President, Communications and Employee Development, and the time limits thereof.

(d) If the determination pursuant to paragraph (c) of this section is to deny the request, the person making the request may appeal such denial to TVA's Senior Vice President, Communications and Employee Development. Such an appeal must be taken within 30 days after the person's receipt of the determination by the Manager, Media Relations and is taken by delivering a written notice of appeal to the Senior Vice President, Communications and Employee Development, Tennessee Valley Authority, Knoxville, Tennessee 37902-1499. Such notice shall include a statement that it is an appeal, from a denial of a request under §1301.48(c) and the Government in the Sunshine Act and shall indicate the date on which the denial was issued and the date on which the denial was received by the person making the request. Promptly after such an appeal is received, TVA's Senior Vice President, Communications and Employee Development or the Senior Vice President's designee shall make a final determination on the appeal. In making such a determination, TVA will consider whether or not to waive the provisions of any exemption contained in §1301.46. TVA shall immediately give written notice of the final determination to the person making the request. If the final determination on the appeal is to deny the request, the notice to the person making the request shall include a statement of the reasons for the denial and a notice of the person's right to judicial review of the denial.

(e) Copies of materials available for public inspection under this section shall be furnished to any person at the actual cost of duplication or transcription.

[42 FR 14086, Mar. 15, 1977. Redesignated at 44 FR 30682, May 29, 1979, and amended at 56 FR 55452, Oct. 28, 1991]

## **PART 1302—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF TVA—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

### **Sec.**

- 1302.1 Purpose.
- 1302.2 Application of this part.
- 1302.3 Definitions.
- 1302.4 Discrimination prohibited.
- 1302.5 Assurances required.
- 1302.6 Compliance information.
- 1302.7 Compliance reviews and conduct of investigations.
- 1302.8 Procedure for effecting compliance.
- 1302.9 Hearings.
- 1302.10 Decisions and notices.
- 1302.11 Judicial review.
- 1302.12 Effect on other regulations; supervision and coordination.

### **APPENDIX A TO PART 1302—FEDERAL FINANCIAL ASSISTANCE TO WHICH THESE REGULATIONS APPLY**

**AUTHORITY:** TVA Act, 48 Stat. 58 (1933) as amended, 16 U.S.C. 831-831dd, and sec. 602 of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-1.

**SOURCE:** 30 FR 311, Jan. 9, 1965, unless otherwise noted. Redesignated at 44 FR 30682, May 29, 1979.

### **§ 1302.1 Purpose.**

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from TVA.

### **§ 1302.2 Application of this part.**

This part applies to any program in which financial assistance is provided by TVA. The programs to which this part applies are listed in Appendix A of this part. Financial assistance, as used in this part, includes the grant or loan of money; the donation of real or personal property; the sale, lease, or license of real or personal property for a consideration which is nominal or reduced for the purpose of assisting the recipient; the waiver of charges which would normally be made, in order to assist the recipient; the entry into a